IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12541 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRUTHVISINH ALIAS PURU BHURABHAI MINEKAR

Versus

COMMISSIONER OF POLCE

Appearance:

1. Special Civil Application No. 12541 of 2004

MR RG CHHARA for Petitioner No. 1

MR ADIL MEHTA for Petitioner No. 1

MR HM PRACHCHHAK, AGP for Respondent No.3

RULE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by the Police Commissioner, Vadodara City on 19.07.2004 in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner is under detention as dangerous person, within the meaning of the PASA Act from 19.07.2004 in pursuance of the above said order.

2. The grounds of detention as placed on record reveal that the detaining authority relied upon two types of material. Firstly, two criminal offences registered against the petitioner and secondly, two incamera statements recorded by the sponsoring authority on 13.07.2004 and 14.07.2004 as verified by the detaining authority. Two crimes came to be registered against the petitioner, one at Saher Kotada Police Station, Ahmedabad on 02.12.2003 under Sections 380 and 511 of the Indian Penal Code, while second offence came to be registered at Fatehgunj Police Station, Vadodara on 12.07.2004 under Sections 394 and 114 of the Indian Penal Code. In second case, it was alleged that the petitioner robbed cash amount of Rs.48,000-00 and one hero-honda splendor motor cycle worth Rs.30,000-00. The detaining authority exhaustively examined investigating papers in both the crimes. Secondly, the detaining authority also placed reliance on two incameara statements of the witnesses, one of which referred to the incident of 04.07.2004 and stated that while on 04.07.2004 at about 10.00 A.M., he was standing near Kalyan Hotel, Vadodara, the petitioner and his accomplices approached the witness and demanded his motor-cycle. On refusal, the petitioner was excited and the witness was caught hold and was beaten on shouting of witness, the crowd was gathered there, but the petitioner took out the knife and threatened the crowd, so the people gathered around disbursed. The area became terror stricken and due to fear of the petitioner, the witness did not report the incident to the police. The second incident is of 26.06.2004, while the witness was going to near Nizampura Gelani Petrol Pump at about 6.00 P.M. on motor-cycle, the petitioner and his accomplice approached the witness and demanded Rs.2,000-00. On refusal, the petitioner was excited, the shop keepers of nearby locality and other passerby gathered around, but the petitioner was excited and took out rampuri knife and he and his accomplices with sticks rushed towards the crowd, so the persons gathered around were disbursed, and the area became terror stricken. Due to fear of the petitioner, the incident was not reported to the police. After taking into consideration the above said material, the detaining authority came to the

conclusion that the petitioner was head strong person and was of ferocious tendency. The petitioner and his accomplices were keeping deadly weapons and after forming gang committing the offences of theft and robbery. The detaining authority came to the conclusion that the petitioner for his above said illegal activity, was in habit of picking up quarrels with innocent citizens and innocent public were beaten by them. The detaining authority came to the conclusion that by the said activities of the petitioner, he was a dangerous person and his activities were prejudicial to the maintenance of the public order. The detaining authority came to the conclusion that the activities of the petitioner was required to be prevented forthwith and, therefore, the detaining authority passed an order of detention against the petitioner which is under challenge in this petition.

3. Learned advocate Mr.A.P.Mehta for the petitioner and learned AGP Mr.H.M.Prachchhak, for respondent No.3 were heard at length.

4. Out of various contentions raised to challenge the order of detention by the petitioner as opposed and controverted by the learned AGP, it appears that the petition can be examined and disposed of, on one issue as to whether the detaining authority applied mind properly to reach to the subjective satisfaction from the material which made available to the detaining authority.

5. In the ground of detention, the detaining authority came to the conclusion that in the second offence registered before Fatehgunj Police Station, the petitioner was in judicial custody. The detaining authority came to the conclusion that the petitioner was likely to move bail application before the Court and was likely to be released on bail. The detaining authority also came to the conclusion that on releasing the petitioner on bail, he was likely to continue his illegal activity prejudicial to the maintenance of public order. Learned advocate for the petitioner makes a statement that the petitioner did not prefer any bail application at the time of passing of the order and, thereafter, also. The petitioner is still in judicial custody in the said crime.

6. The facts of this case are squarely covered by the decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent material before the officer passing the

detention order that the detenu was likely to be released on bail, inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not a cogent material and the detention order based on such material was liable to be quashed.

7. Applying the above ratio as laid down by the Apex Court to the facts of the present case, it clearly appears that there was no material whatsoever before the detaining authority to infer that the petitioner was likely to move the bail application. Likewise, there was no material whatsoever before the detaining authority to infer that after moving such bail application, the petitioner was likely to be released on bail and was likely to continue his illegal activities. True it is that the petitioner being in judicial custody is not an absolute impediment for the detaining authority in passing the order of detention. The law has been established by the Apex Court is that detaining authority must apply mind to cogent material and come to conclusion. The order of detention can be passed even if the detenu is in judicial custody, if cogent and relevant material is placed before the detaining authority and such detention order cannot be quashed merely on that ground. The crux of the matter is, the inference of the detaining authority in such circumstances must be drawn relying upon the cogent and relevant material in coming to the conclusion that the detenu was likely to be released on bail. In the present case for coming to the conclusion that the petitioner was likely to move the bail application and further conclusion that on moving such bail application the petitioner was likely to be released on bail, there was absolutely no material before the detaining authority. Therefore, the inference drawn by the detaining authority in this respect is not legal, valid and in accordance with law. In this view of the matter, the order under challenge is required to be quashed and set aside on this ground alone.

8. In the result, in view of the above discussion, this Special Civil Application is allowed. The order passed by the Police Commissioner, Vadodara City on 19.07.2004 against the petitioner in exercise of powers conferred upon him under Section 3(2) of the PASA Act is hereby ordered to be quashed and set aside. The petitioner Pruthvisinh alias Puru Bhurabhai Minekar is ordered to be set at liberty forthwith, if he is not required to be detained for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)